REMARKS

Reconsideration of the application, as amended, is respectfully requested.

Claim 1 has been amended to recite from 3 to 15% added non-peanut protein. This range combines the ranges originally presented in claim 11 and 12.

Billerbeck et al., U.S. Patent No. 4,000,322 is directed to a peanut butter sweetening agent composition. Billerbeck et al. explain that there have been continuing efforts to improve the acceptance of peanut butter as to its flavor, composition, appearance and characteristics on the pallets. Billerbeck et al. also explain that because of the sweetening effect of honey or other sweetening agents they provide a desirable additional ingredient, but the significant amounts of the sweetening agents cannot be added without the concomitant problems in preparation of the combined composition and in stability on storage.

In their summary of the invention, Billerbeck et al. indicate that peanuts, edible oils, emulsifiers anhydrous hydrophilic substances, fortifying materials and stabilizers are thoroughly mixed while the peanuts are milled after which the sweetening agent is heated to an elevated temperature such as 120°F to 150°F and mixed with the milled peanut composition for a time sufficient to provide substantial homogeniety and then cooled. The resulting product is said to provide a smoothly textured storage stable product. Preferably at least 25% or more, usually at least 50%, of the sweetening agent will be honey. The sweetening agent is combined to provide a final concentration of at least 5 wt. % and not greater than 25 wt. %, more usually from 5 to 10 wt. %, based on the final composition. The saccharide additive will be added to provide at least about 2.5 wt. % and not more than about 5 wt. % total amount, more usually from

about 3-4% total amount based on the final composition. Billerbeck Examples 1, 2 and 3 in column 6 provide respectively 5%, 10% and 5% honey.

The Office points to no teaching by Billerbeck et al. of a nut spread having 3.5 grams or less of total adjusted carbohydrate per table serving and from 3 to 15% of added non-peanut protein. Even less does the Office point to any teaching by Billerbeck et al. of the subject matter of claim 13 wherein the added protein is soy protein. In particular, Billerbeck et al. emphasize the importance of the sweetening effect of honey or other sweetening agents. Although, as the Office points out, Billerbeck et al. mention in passing the possibility of using sweetening agents which are "synthetic groups," illustrative sweetening agents given include corn syrup, sweetose, liquid sugar, maple syrup, etc. Billerbeck et al. continue to indicate that all of these compositions are for the most part aqueous concentrates of sugars, mono- and disaccharides having less than about 40 wt. % water. Moreover, at the top of column 3, Billerbeck et al. indicate that preferably at least 25%, more usually 50 wt. % of the sweetening agent will be honey. It is not apparent how this would lead one of ordinary skill to Applicants' nut spread having 3.5 grams or fewer of total adjusted carbohydrates per two tablespoons serving together with the other elements recited in the various claims.

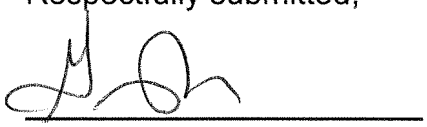
Sevenants et al., U.S. Statutory Invention Registration H1636 is directed to a reduced fat peanut butter having an enhanced roasted peanut flavor. In order to lower the fat content and maintain protein levels in the spread, non-fat containing solids are used. These may include corn syrup solids, maltodextrin, dextrose, polydextrose, fiber, mono- and disaccharides, starches, and flours, protein supplements such as additional peanut solids, soy flour, soy concentrate, soy isolate, casein, egg whites and protein from other animal or vegetable sources or a combination of the above. The sugars,

honey or molasses used to sweeten or flavor the nut spread are included in the levels of solids. Typically, 3% to 10% sugar or molasses is said to be used for flavoring. Proteins can be added to fortify the low fat product with protein materials usually added at a level of from about 1% to about 20% by weight. Nut spreads according to the Sevenants et al. invention are said to have a total fat content of from about 25% to about 42%. The reduced fat spread of Example 1 of Sevenants et al. includes 7.2% sugar, 0.5% molasses, 5% soy protein isolate and 23.42% corn syrup solids.

The focus of Sevenants et al. is clearly a low fat spread. Although Sevenants et al. do speak of the possibility of adding protein, other than peanut protein, to their spread, the Office points to no teaching of a spread having the parameters recited in the present claims. Again, while Billerbeck et al. may add protein, they do so to lower fat, and the Office points to no explicit teaching of lowering of carbohydrates. Although Sevenants et al. mention the possibility of use of artificial sweeteners, this hardly leads one of ordinary skill to Applicants' low carbohydrate product, particularly given the fact that Sevenants teach addition of carbohydrate containing ingredients as non-fat solids and as flavorants. Indeed, the Office points to no teaching at all of any artificial sweetener in Sevenants et al. example. Therefore, it is submitted that the Office is using hindsight to attempt to reconstruct Sevenants and Billerbeck et al. to obtain Applicants' invention. Indeed, Billerbeck et al. summarize their invention as mixing peanuts, edible oil, emulsifiers, anhydrous hydrophilic substances, fortifying materials and stabilizers while the peanuts are milled and addition of sweetening agent at elevated temperature. It is not clear why one of ordinary skill would be lead to add soy or other non-peanut proteins to that mix with the reasonable expectation that Billerbeck et al. objectives would be achieved.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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